

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3780 OF 1985

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

- 
1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

-----

ABAD DAIRY KARMACHARI MANDAL, THROUGH ADDL.GEN SECRETARY  
VERSUS  
THE MAN.DIR., ABAD DAIRY DEVELOPMENT CORPN.

-----

Appearance:

None present for Petitioner  
Mr.Dipak Patel for Respondents

-----

Coram: S.K. Keshote,J  
Date of decision:15/08/1997

C.A.V. JUDGMENT

#. The petitioner, Abad Dairy Karmachari Mandal, through its Additional General Secretary, filed this Special Civil Application and prayed therein for direction to the respondents to consider the case of petitioners (names of whom shown in list annexure 'A') for revision of pay scale in the grade of Rs.290-480 as has been done in the case of erstwhile employees of the respondent-Corporation pursuant to Circular No.3, annexure 'B'. Further consequential reliefs have also been prayed for.

#. The respondent filed reply to the Special Civil Application and in para-3 of the said reply, it has come up with the case that the petition deserves to be dismissed for suppression of material facts. It has been stated that the petitioner Union had raised an industrial dispute in which very same demand of revision of pay scale has been raised and that industrial dispute has been referred by the Government to Industrial Tribunal at Ahmedabad where it has been registered as Ref.(IT) No.568 of 1983. The respondent contended that this is an important and material fact which has been suppressed by the petitioner and this writ petition deserves to be dismissed only on this ground.

#. A rejoinder to the reply has been filed by the petitioner and a mere reading thereof gives out that the petitioner has admitted as a fact, that the aforesaid Reference is pending in the matter of demand of revision of pay scale. However, the petitioner tried to make out a distinction by stating that in addition to revision of pay scale, certain other demands have also been raised which are the subject matter of said Reference.

#. It is not in dispute, in view of admission of the petitioner in rejoinder, that one of the demands, raised by the Union in Reference is identical to the demand which has been raised in the present petition, and this admission is certainly a case of suppression of material fact by the petitioner. Whosoever comes before this Court, praying for equity and justice under Article 226 of the Constitution of India, is under obligation to candidly disclose all material facts. Suppression of material facts is a serious matter and in case by suppressing material facts, the party obtains the order of Rule nisi, the matter deserves no hearing on merits. In such case, the petition deserves to be dismissed only on the ground of suppression of material fact.

#. Yet there is another reason for which this petition is not maintainable. The petitioner is an employees'

Union and in the matter of demand of revision of pay scale, the only appropriate remedy available to it is under the Industrial Disputes Act, 1947. Individually speaking none of the legal or fundamental rights of the petitioner-Union are infringed which should be protected by this Court under Article 226 of the Constitution of India. The matter would have been different in case individual employees had approached this Court with a complaint of infringement of their legal or fundamental rights. It is a case where the petitioner-Union is espousing the cause of its 82 members regarding revision of their pay scale. Individual workman cannot raise the dispute in respect of such revision of pay scale etc., except only on the subject covered under Section 2A of the Industrial Disputes Act, 1947. So far as the petitioner-Union is concerned, it can raise industrial dispute in respect of all matters covered under the Industrial Disputes Act as well as other disputes and as such, it is a case where it has efficacious alternative remedy available. I therefore do not find any justification in the approach of the petitioner to this Court by circumventing the statutory remedy available for the grievance made in the Special Civil Application.

#. The matter needs to be examined from a different angle also. In this case, not only the statutory alternative remedy was available to the petitioner for redressal of its grievance made in the Special Civil Application, but in fact, the said remedy was availed of by it and as such, this writ petition is not maintainable. Reference in this respect may have to the decision of Hon'ble Supreme Court in the case of Bombay Metropolitan Region Development Authority, Bombay v. Gokak Patel Volkart Ltd. & Ors., reported in JT 1995(1) SC 155. The Apex Court, in para-13 of the said judgment held:

We are of the view that the point taken by the appellant is of substance. This is a case, where there is not only the existence of an alternative remedy, but the writ petitioner actually had availed of that remedy. The writ petitioner's appeal before the statutory authority was pending. In that view of the matter this writ petition should not have been entertained.

A litigant cannot be permitted to avail of parallel remedies at the same time. Leaving apart the the question whether the petitioner should have approached this Court or not, the fact remains that the petitioner has availed of alternative remedy and simultaneously it

has also availed of this remedy. A litigant cannot be permitted to avail two parallel remedies at the same time in respect of same cause of action and grievance.

#. This Special Civil Application is wholly misconceived and the same therefore deserves to be dismissed. The Special Civil Application is dismissed. Rule discharged. No order as to costs.

.....

(sbl)